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## FINAL NOTICE

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**To:** Peter Thomas Carron  
**Date of Birth:** 15 September 1968  
**IRN:** PTC00001 (inactive)  
**Date:** 16 September 2014

### **ACTION**

1. For the reasons given in this Notice, the Authority hereby:
  - i. imposes on Peter Thomas Carron ("Mr Carron") a financial penalty of £300,000; and
  - ii. makes an order prohibiting Mr Carron from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm. This order takes effect from 16 September 2014.
2. The Authority issued a Decision Notice to Mr Carron on 6 September 2013, which notified him that it had decided to take the above action.
3. On 19 December 2013, Mr Carron referred that Decision Notice to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal"), and on 18 July 2014 the Authority applied to have that reference struck out.

4. On 22 July 2014, the Tribunal decided that the reference should be struck out, and the Authority accordingly imposes a financial penalty of £300,000 on Mr Carron, and makes an order prohibiting Mr Carron from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm.

## **SUMMARY OF REASONS**

5. Mr Carron was a senior partner and investment adviser at St James's Place Wealth Management Plc ("SJP") and an approved person. Mr Carron was also the director and majority shareholder in three companies: Primrose Associates Limited ("Primrose"), Evaluate Technologies Limited ("Evaluate") and Comment Technologies Limited ("Comment") (collectively "the Companies").
6. During the period from 6 November 2004 to 21 June 2010 (the "Relevant Period") Mr Carron advised 11 clients from his existing SJP client base, who had consulted him as their financial adviser at SJP, to invest in the Companies. They invested a total sum of approximately £2.4 million. Mr Carron told investors that these funds would be used to develop the businesses and they would receive a guaranteed return of 10% on their investments. The clients lost approximately £2.2 million when the Companies went into liquidation between 6 May and 2 August 2010.
7. Mr Carron breached Statement of Principle 1 of the Authority's Statements of Principle because he failed to act with honesty and integrity in that:
  - i. he abused his position as a senior partner at SJP by recklessly:
    - a. failing to disclose to clients that he owned and controlled the Companies; and
    - b. misleading clients into investing in the Companies on the basis that the investments were approved, authorised or otherwise endorsed by SJP, which they were not;
  - ii. he deliberately:
    - a. advised clients to invest in the Companies irrespective of whether the investment was suitable for their needs and did not consider whether there were alternative investments which were more suitable;

- b. advised clients to invest in the Companies without consideration as to their capacity for loss or ability to recover losses;
  - c. failed to provide clients with adequate information about their investments, including risk warnings, for example, about the fact they were investing directly in private unlisted companies (two of which were start-up companies);
  - d. did not communicate clearly to clients which company they were investing in or what the funds were for, and sometimes moved their funds from one company to another without their consent; and
  - e. continued to advise clients to invest in the Companies from 7 January 2009 when he knew that the Companies were in financial difficulties.
8. The Authority regards these failings as being particularly serious for the following reasons:
- i. Mr Carron's primary objective was to obtain funding for the Companies rather than to provide appropriate advice to clients;
  - ii. the misconduct spanned a period of more than five years;
  - iii. he exposed clients to an excessive risk of financial loss, that crystallised on liquidation of the Companies. The 11 SJP clients lost approximately £2.2 million between them; and
  - iv. Mr Carron's behaviour was in part deliberate and in part reckless.
9. This action supports the Authority's regulatory objective of the protection of consumers.

## **DEFINITIONS**

10. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"the Authority's Handbook" means the Authority's Handbook of rules and guidance;

"Clients" means the 11 clients whose evidence is relied on by the Authority for the purpose of imposing sanctions on Mr Carron;

"Comment" means Comment Technologies Limited;

"the Companies" means Primrose, Evaluate and Comment which were owned and controlled by Mr Carron;

"DEPP" means the Authority's Decision Procedures and Penalties Manual;

"EG" means the Authority's Enforcement Guide;

"Evaluate" means Evaluate Technologies Limited;

"Mr Carron" means Peter Thomas Carron;

"Primrose" means Primrose Associates Limited;

"Relevant Period" means the period from 6 November 2004 to 21 June 2010;

"SJP" means St James's Place Wealth Management Plc;

"Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved Persons; and

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

## **FACTS AND MATTERS**

### **Background**

11. Mr Carron was a senior partner, a financial adviser and an appointed representative of SJP from 23 December 2004 to 30 June 2010. Advisers at SJP are self-employed and have the title "partner". The title "senior partner" is given by the firm to an adviser on the basis of several criteria including business generated and length of time spent as an adviser. Mr Carron held the CF21/CF30 function (Customer) at SJP between 1 December 2001 and 30 June 2010. He held the CF7 function (Sole Trader – Appointed Representative) at SJP between 30 November 2005 and 21 January 2007.

12. Mr Carron developed his financial advisory practice and network of clients whilst working for SJP as a partner and an approved person. SJP provided Mr Carron with technical support and a compliance function.

13. In addition to his role as a financial adviser at SJP, Mr Carron held an interest in the Companies which were put into liquidation between 6 May 2010 and 2 August 2010. Details of the Companies are set out below.

*Primrose*

14. Primrose was incorporated on 20 September 2002 and traded as a mortgage broker. The firm was authorised by the Authority on 31 October 2004. Primrose went into creditors' voluntary liquidation on 21 June 2010.

15. At the time of liquidation, Mr Carron was the sole director of Primrose and the majority shareholder.

16. Mr Carron brought in all the business to Primrose and was the only source of income generation for the company.

*Evaluate*

17. Evaluate was incorporated on 30 May 2007 when it launched and commenced operation of an on-line system for sourcing mortgages. The firm was authorised by the Authority on 23 July 2009 and was an appointed representative of Primrose. Evaluate went into creditors' voluntary liquidation on 27 May 2010.

18. Mr Carron was the sole director of Evaluate at the time of liquidation. Mr Carron held all of Evaluate's shares.

*Comment*

19. Comment was incorporated on 5 January 2009 and set out to develop the technology to launch social networking sites aimed at businesses. Comment went into liquidation on 2 August 2010. It was not authorised by the Authority. Mr Carron was one of two directors of Comment and its majority shareholder.

**Investments in the Companies**

20. During the Relevant Period at least 32 SJP clients invested in the Companies through Mr Carron. They invested a total sum of at least £5.7 million. Mr Carron advised at least 11 of these 32 clients, who had consulted him in his role as a

partner and approved person at SJP and as their financial adviser, to invest in the Companies. Mr Carron told the 11 clients (the "Clients") that their funds would be used to develop the businesses and they would receive a guaranteed return on their investments. Some of these clients were told in writing that they would receive a guaranteed return of 10%. Some other clients were told that they would receive a specific sum, which amounted to a return of between 9-24% per annum.

21. The Clients lost approximately £2.2 million when the Companies went into liquidation between 6 May and 2 August 2010. SJP received requests for compensation in the sum of approximately £2.2 million for the Clients and paid a total of approximately £1.9 million in compensation for their claims.

### **Method of investment**

22. The Clients were instructed to transfer the funds for investment into a bank account named Primrose Associates Special Projects Clients Account ("the Special Projects Account"). Sums were then transferred from this account to bank accounts in the names of the Companies. During the Relevant Period £3,137,269 from the total funds invested by the 32 clients (including the Clients) was transferred on Mr Carron's instructions from the Special Projects Account to Primrose, £593,068 to Evaluate and £64,109 to Comment. These funds were mixed with the existing funds in the Companies' bank accounts and used as part of the Companies' own resources to fund their outgoings.

23. Many of the Clients received acknowledgement of their investment in the form of a letter that confirmed receipt of the funds, the amount received, the term of the investment and the date on which it would be reviewed, the return on the investment (10%) and the access notice period. However some Clients received far less information. The letters were all produced and signed by Mr Carron. The Clients were not provided with a formal loan contract or agreement or a more detailed document setting out the terms and conditions of the transaction. All of the Clients thought they were making investments, as opposed to making deposits.

### **Clients relied on by the Authority**

24. The Authority reviewed the client files of SJP for five clients and also interviewed those clients. It reviewed the client files of an additional six investors and considered SJP's review of claims lodged by all of the 32 SJP clients and the

compensation paid by SJP to those clients. The Authority is relying on the evidence relating to the 11 clients (the "Clients") and sets out below summary details of the Clients' investments in the Companies.

*Client A*

25. Client A became a client of Mr Carron in March 2006 and made various investments on his advice. He later invested £375,000 in Primrose and Comment. He received compensation from SJP of £240,000 and a contribution to his solicitor's fees of £1,116.84.

*Client B*

26. Client B was aged 63 when he became a client of Mr Carron in 2005. Client B invested £390,000 in Primrose in the period from May 2007 to November 2008. He received compensation from SJP of £305,000.

*Client C*

27. Client C and her husband became clients of Mr Carron in 2000 and made various investments on the advice of Mr Carron between 2000 and 2006. They then invested £495,000 in Primrose between February 2007 and December 2009. At the time of the first investment into Primrose the client was aged 61. £9,600 was returned to Client C by Mr Carron over the term of the investment leaving a net balance of £485,400. She received £375,000 in compensation from SJP.

*Client D*

28. Client D became a client of Mr Carron in 2000. In 2007 Client D contacted Mr Carron for further financial advice but was referred to another adviser at SJP. Client D took out further investments through the other adviser. In 2010 Client D contacted Mr Carron again. Mr Carron advised him to invest £20,000 in Primrose, which Client D did in May 2010. Three weeks later he received an email from Mr Carron telling him the Companies were in liquidation. Client D received £20,000 compensation from SJP.

*Client E*

29. Client E became a client of Mr Carron in February 2000. In June 2009 she invested £10,000 in Primrose and in December 2009 she invested a further £65,000 in Comment. Client E received £75,000 compensation from SJP.

*Client F*

30. Client F was introduced to Mr Carron by other clients of SJP and she met Mr Carron at SJP's offices. On Mr Carron's advice she invested £57,000 in Primrose in February 2009. Mr Carron told Client F that her money would be split over a number of investments and that it was safe. Client F received 100% compensation from SJP.

*Client G*

31. Client G was a client of Mr Carron from 2000. He invested in an SJP International Investment Bond in September 2000. He then invested £223,900 in Primrose in May 2005 having taken the funds out of his SJP investment. Over the term of the investment half of the money was returned to him leaving a balance of £111,950. Client G received 100% compensation from SJP.

*Client H*

32. Client H was a client of Mr Carron from 1997/1998 and invested £200,000 in Primrose in late 2008. The funds were received by the client from a Critical Illness insurance policy payment when his wife was diagnosed with cancer. SJP paid Client H 100% compensation.

*Client I*

33. Client I first contacted Mr Carron following the death of her husband in November 2009. On Mr Carron's advice she invested £50,000 in Comment in February 2010. She did not withdraw any of the funds at any point. SJP paid Client I 100% compensation.

*Client J*

34. Client J became a client of SJP in March 2009. Client J invested £75,000 in Primrose in June 2009. Over the term of the investment £35,000 was returned to him leaving a balance of £40,000. SJP paid Client J 100% compensation.

*Client K*

35. Client K became a client of Mr Carron in 2003/2004. He invested £445,000 in Primrose: £215,000 in November 2004, £110,000 in May 2007 and £120,000 in

November 2007. The funds for the first investment arose from a re-mortgage of Client K's home. Against SJP's procedures Mr Carron attempted to invest these for the client in three ISAs and a unit trust with SJP. SJP rejected the investments because of the source of the funds and four days after the funds were returned to the client they were invested in Primrose. SJP paid Client K 100% compensation.

### **Mr Carron's abuse of position**

36. Mr Carron abused his position as a senior partner and approved person at SJP to persuade the Clients to invest in the Companies.
37. Mr Carron recklessly failed to disclose adequately to the Clients his ownership and control of the Companies, or the existence of a conflict of interest between his role as adviser at SJP and his ownership of the Companies. For example, he sometimes sent the Clients hardcopy correspondence relating to the Companies on SJP headed paper and emails with an email signature that set out his title and role at SJP.
38. Two of the Clients thought that Primrose was a part of SJP and had no knowledge that Mr Carron owned the Company. One of the Clients was aware that Mr Carron was a director of Primrose, but believed the investment was sanctioned by SJP. Another Client thought that the investment being made was like other investments previously made through Mr Carron and SJP. A further Client did not realise that her funds would be invested directly into Primrose.

### **Mr Carron's misleading statements and lack of regard for customers' interests**

39. Mr Carron also deliberately misled the Clients about important aspects of their investments in the Companies and failed to pay due regard to the Clients' interests by the following actions.
  - i. He misled the Clients about the risks of their investments and guaranteed that their investments would be "safe". Four of the five Clients interviewed by the Authority told Mr Carron that they wanted low risk investments and that their attitudes to risk were cautious. On the basis of his assurances, these Clients believed their investments to be low risk and at least one Client was assured that the investment was "safe as houses". Another Client was worried about losing her savings that were in a bank account, due to the financial instability of the markets and particularly that bank, so

she gave them to Mr Carron to invest and he guaranteed it would be safe. A third Client wanted to make sure his investment was safe, and told the Authority that "Carron assured me it was 100% safe."

- ii. He misled the Clients about the likely performance of their investment in the Companies by providing inappropriate projections of future investment returns, and also telling them in some cases in writing that they were guaranteed a 10% return. Their client files contain examples of letters on the headed paper of Primrose and Comment that include the phrase "Return on investment 10% per annum" or "Return on investment 10%". In other letters Mr Carron states that the return on the investment will be a specific monthly or quarterly sum, which amounts to a return of between 9-24% per annum. He continued to reassure investors of the soundness of the Companies and to advise the Clients to invest in the Companies even when he knew that the Companies were in financial difficulties and could not repay the capital invested or generate the promised return. £797,000 of the approximately £2.2 million invested by the Clients was invested after 7 January 2009, when Mr Carron signed the Primrose accounts for the year ended 31 December 2007 showing that the company was insolvent.
- iii. He did not pay due regard to the interests of his clients and his primary objective when advising on these investments was to obtain funding for his businesses. Mr Carron advised the Clients to invest in the Companies irrespective of whether the investment was suitable for their needs. The Clients said Mr Carron never suggested any alternative investments.

**Mr Carron's lack of clarity as to which company funds were invested in, and his transfers between Companies without client consent**

40. Mr Carron did not always specify in which company a Client would be investing or what the funds would be used for, and did not ask for consent before moving Clients' funds between one company and another.
41. From 6 November 2004 to 19 February 2009 Mr Carron sent letters to the Clients confirming that he had received funds into the Special Projects Account but did not specify into which company the funds were invested. After 19 February 2009 he sometimes sent letters to Clients referring to investments in Comment and sometimes did not specify where the funds would be invested.

42. One of the Clients said he did not know what the funds would be used for. Another said that she did not realise her funds would be invested directly in Primrose. A third said that Mr Carron moved her investment in one company into another without asking her or consulting with her first.

### **Mr Carron's withdrawal of funds**

43. Mr Carron indirectly benefitted from the investments in the Companies in that he withdrew funds from the Companies' bank accounts. Mr Carron told the Authority that he had not withdrawn commission to which he was entitled. Whilst he also put funds into the Companies, the withdrawals by Mr Carron from the Companies' bank accounts exceeded the amounts deposited by Mr Carron by in excess of £400,000.

### **Compensation by SJP**

44. Following the liquidation of the Companies many clients complained to SJP and requested compensation. SJP reviewed the circumstances for each investor individually and paid compensation to 30 out of 32 investors who complained. SJP's decision to compensate turned in each case on SJP's view of whether or not the investments in the Companies had been represented as SJP investments, or at least if they had been presented to the clients in such a way that they would reasonably have thought they were making a legitimate investment through Peter Carron in his capacity as an adviser of SJP.

45. SJP received requests for compensation in the sum of £5,757,530 and paid a total of £3,344,582 in compensation to Mr Carron's clients. SJP paid 11 investors 100% of their lost capital, a total of £1,051,130. In these 11 cases, SJP agreed that Mr Carron had represented the investments as SJP investments or in such a way that the clients reasonably thought they were making a legitimate investment through Mr Carron in his capacity as a senior partner in SJP. In a further 14 cases SJP paid 50% or more of the capital lost, a total of £1,878,100. In these cases SJP took the view that clients could or should have been aware of the nature of the investments but as the clients produced some evidence that supported their assertions, SJP made a decision to compensate clients for between 50% and 83% of what they lost. In three cases SJP paid between 25% and 49% of the capital lost, a total of £405,000, and in two cases SJP did not compensate the investors at all.

46. SJP paid the 11 Clients on whose evidence the Authority relies in total approximately £1.9 million. Eight Clients received 100%, one Client received 78%, one Client received 77% and one Client received 64%.

## **FAILINGS**

47. The regulatory provisions relevant to this Notice are referred to in Annex A.

48. By reason of the facts and matters referred to above, the Authority considers that Mr Carron breached Statement of Principle 1 by failing to act with honesty and integrity in carrying out his controlled function at SJP in that:

- i. he abused his position as a senior partner at SJP by recklessly:
  - a. failing to disclose to clients that he owned and controlled the Companies;  
and
  - b. misleading clients into investing in the Companies on the basis that the investments were approved, authorised or otherwise endorsed by SJP, which they were not;
- ii. he deliberately:
  - a. advised clients to invest in the Companies irrespective of whether the investment was suitable for their needs and did not consider whether there were alternative investments which were more suitable;
  - b. advised clients to invest in the Companies without consideration as to their capacity for loss or ability to recover losses;
  - c. failed to provide clients with adequate information about their investments, including risk warnings, for example, about the fact they were investing directly in private unlisted companies (two of which were start-up companies);
  - d. did not communicate clearly to clients which company they were investing in or what the funds were for, and sometimes moved their funds from one company to another without their consent; and
  - e. continued to advise clients to invest in the Companies from 7 January 2009 when he knew that the Companies were in financial difficulties.

49. By his acts, Mr Carron exposed clients to an excessive risk of financial loss, which crystallised on the Companies' liquidation.

50. Mr Carron's conduct fell short of the standards required by the Authority's fit and proper test for approved persons in terms of honesty and integrity. He is therefore not a fit and proper person to perform any function in relation to any regulated activity, carried on by any authorised or exempt person, or exempt professional person.

## **SANCTION**

### **Financial Penalty**

51. The Authority has imposed a financial penalty on Mr Carron of £300,000.

52. The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP, which forms part of the Authority's Handbook. The Authority has had regard to the fact that on 6 March 2010, the Authority adopted a new penalty-setting regime. As the majority (all but 3 and a half months) of Mr Carron's misconduct took place before the adoption of the new regime, the Authority has considered this case under the regime which applied before 6 March 2010, and all references to DEPP are to the version that was in force up to 5 March 2010. The Authority has also had regard to Chapter 7 of its Enforcement Guide and to the Authority's Enforcement Manual which was in force for part of the Relevant Period.

53. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour. A financial penalty is a tool that the Authority may employ to help it achieve its regulatory objectives.

54. The Authority will consider the full circumstances of each case when determining whether it is appropriate to impose a financial penalty. Applying the criteria set out in DEPP 6.2.1 G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 G (regarding whether to impose a financial penalty or a public censure), the Authority considers that a financial penalty is an appropriate sanction in this case, given the serious nature of the breaches and the significant crystallised losses to clients.

55. DEPP 6.5.2 G sets out a non-exhaustive list of factors that may be relevant in determining the level of a financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2 G(1))

56. The Authority considers that a financial penalty should be imposed on Mr Carron to demonstrate to him and others the seriousness with which the Authority regards such behaviour.

The nature, seriousness and impact of the breaches in question (DEPP 6.5.2 G(2))

57. Mr Carron's misconduct was extremely serious and resulted in a significant risk of loss and crystallised losses for his clients.

The extent to which the breaches were deliberate or reckless (DEPP 6.5.2 G(3))

58. Mr Carron's behaviour was in part deliberate and in part reckless. It was reckless in that in many cases he failed to disclose to the Clients that he owned and controlled the Companies and misled them into investing in the Companies on the basis that the investments were approved, authorised or endorsed by SJP, which they were not. He also deliberately misled the Clients about important aspects of their investments in the Companies and failed to pay due regard to Clients' interests.

Whether the person is an individual (DEPP 6.5.2 G(4))

59. The Authority recognises that the financial penalty imposed on Mr Carron may have a greater impact on him as an individual than would a financial penalty imposed on a firm. However, the Authority considers that the seriousness of Mr Carron's misconduct warrants the imposition of a significant financial penalty.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed (DEPP 6.5.2 G(5))

60. The Authority has seen no evidence to suggest that Mr Carron will be unable to pay this penalty.

The amount of benefit gained or loss avoided (DEPP 6.5.2 G(6))

61. The 11 Clients of Mr Carron who invested in the Companies and on whom the Authority relies collectively invested a total sum in the region of £2.4 million. Mr Carron indirectly benefitted personally from his actions by withdrawing funds from the Companies' bank accounts.

Other action taken by the Authority (DEPP 6.5.2G(10))

62. In determining the level of financial penalty, the Authority has taken into account penalties imposed by the Authority on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the Authority imposes sanctions.

Conclusion on financial penalty

63. In conclusion, having regard to all the circumstances, the Authority considers the appropriate level of financial penalty to be £300,000.

**Prohibition order**

64. Mr Carron has demonstrated a lack of honesty and integrity and is therefore not a fit and proper person to perform functions in relation to regulated activities. The Authority makes an order prohibiting Mr Carron from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm, pursuant to section 56 of the Act.

**REPRESENTATIONS**

65. Annex B contains a brief summary of the key representations made by Mr Carron, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Carron, whether or not set out in Annex B.

**PROCEDURAL MATTERS**

**Decision maker**

66. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

67. This Final Notice is given under, and in accordance with section 390 of the Act.

### **Manner of and time for Payment**

68. The financial penalty must be paid in full by Mr Carron to the Authority by no later than 30 September 2014, 14 days from the date of the Final Notice.

### **If the financial penalty is not paid**

69. If all or any of the financial penalty is outstanding on 30 September 2014, the Authority may recover the outstanding amount as a debt owed by Mr Carron and due to the Authority.

### **Publicity**

70. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

71. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Contacts**

72. For more information concerning this matter generally, contact Kate Tuckley (direct line: 020 7066 7086 /email: [kate.tuckley@fca.org.uk](mailto:kate.tuckley@fca.org.uk)) of the Enforcement and Financial Crime Division of the Authority

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**Bill Sillett**

**Financial Conduct Authority, Enforcement and Financial Crime Division**

## **Annex A**

### **STATUTORY AND REGULATORY FRAMEWORK**

#### **1. Prohibition – Section 56 of the Act**

- 1.1. The Authority has the power, pursuant to section 56(2) of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if under section 56(1) of the Act it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

#### **2. The Authority's Enforcement Guide**

- 2.1. In deciding whether to make a prohibition order the Authority must have regard to the guidance contained in Chapter 9 of the Enforcement Guide ("EG").
- 2.2. EG 9.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the Authority to work towards achieving its regulatory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform.
- 2.3. EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
- 2.4. EG 9.8 to 9.14 provide guidance on the Authority's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.
- 2.5. EG 9.8 states that, when it has concerns about the fitness and propriety of an approved person, the Authority may consider whether it should prohibit that

person from performing functions in relation to regulated activities, withdraw its approval, or both. The Authority will, in each case, consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning.

- 2.6. EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness);
  - (2) whether, and to what extent the approved person has (a) failed to comply with the Statements of Principle or (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
  - (3) the relevance and materiality of any matters indicating unfitness;
  - (4) the length of time since the occurrence of any matters indicating unfitness; and
  - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.7. EG 9.12 provides examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include severe acts of dishonesty, for example, which may have resulted in financial crime, serious lack of competence, and serious breaches of the Statements of Principle.
- 2.8. EG 9.23 provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.

### **3. Fit and Proper Test for Approved Persons**

- 3.1. The section of the Authority's Handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.2. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. Among the most important considerations will be the person's honesty, integrity and reputation, competence and capability, and his financial soundness.
- 3.3. FIT 2.1.3 G provides that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including but not limited to:
  - (1) whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;
  - (2) whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;
  - (3) whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity;
  - (4) whether the person has been the subject of any justified complaint relating to regulated activities; and
  - (5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies.

## **Statements of Principle and the Code of Practice for Approved Persons ("APER")**

- 3.4. APER sets out the fundamental obligations of approved persons and sets out examples of conduct which, in the opinion of the Authority, does not comply with the Statements of Principle. It further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle. All references to APER in this section are references to the version that was in force during the relevant period.
- 3.5. APER 3.1.3 G provides that, when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 3.6. APER 3.1.4 G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
- 3.7. The Statement of Principle relevant to this matter is Statement of Principle 1 which provides that "*an approved person must act with integrity in carrying out his controlled function.*" (APER 2.1.2 P).
- 3.8. APER 4.1.2 E sets out non-exhaustive examples of behaviour which the Authority considers does not comply with Statement of Principle 1. Examples of such conduct are:
- (1) deliberately misleading a client about the risks of an investment (APER 4.1.4 E (2));
  - (2) deliberately misleading a client about the likely performance of investment products by providing inappropriate projections of future investment returns (APER 4.1.4 E (4));
  - (3) deliberately failing to disclose the existence of a conflict of interest in connection with dealings with a client (APER 4.1.13 E);

- (4) deliberately not paying due regard to the interests of a customer (APER 4.1.14 E); and
- (5) deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment (APER 4.1.15 E).

#### **4. Financial Penalty – Section 66 of the Act**

- 4.1. The Authority has the power pursuant to Section 66(3) of the Act to impose a financial penalty on an approved person if it appears to the Authority that the person is guilty of misconduct and if the Authority is satisfied that it is appropriate in all the circumstances. Under Section 66(2) of the Act, a person is guilty of misconduct if, while an approved person, that person has failed to comply with a statement of principle issued by the Authority under section 64 of the Act.
- 4.2. The Authority's policy in relation to the imposition of financial penalties is set out above in the Sanction section under the heading Financial Penalty.

## **Annex B**

### **REPRESENTATIONS**

1. Mr Carron made the following representations: the Authority had conducted this matter in an unfair and biased manner, over an unduly protracted period. It had previously published on its website a statement concerning Mr Carron which it had later accepted to be factually inaccurate, and for which it had apologised following a complaint by Mr Carron. This had coloured its approach to its subsequent investigation. Mr Carron considered it would be futile to make any substantive response to the allegations of the Authority as set out in the Warning Notice issued on 23 May 2013, because the prior conduct of the Authority suggested it would not treat him fairly.
2. While Mr Carron made no substantive representations on the allegations set out in the Warning Notice, the Authority notes that, prior to the issue of the Warning Notice, Mr Carron:
  - a. denied the allegations against him in general terms; and
  - b. stated that his activities in relation to the transactions which are the subject of this Notice fell outside the scope of his controlled functions as an Authority approved person, and therefore did not fall within the Authority's disciplinary jurisdiction over approved persons.
3. The Authority has reached the following conclusions:
  - a. It has not seen any evidence:
    - i. that the investigation team in the Authority's Enforcement and Financial Crime Division (which had not been involved in the publication which had been the subject of the complaint) conducted its enquiries improperly or over an unduly protracted period; or
    - ii. which might undermine the integrity of the evidence relied upon by the investigation team.

In any event, any complaint which Mr Carron might have about the conduct of the investigation should be pursued by him using the Complaints Scheme established under the Financial Services Act 2012, and not before the Regulatory Decisions Committee. The Committee is independent from the Authority's Enforcement and Financial Crime

Division and the purpose of its proceedings is to afford him the opportunity to provide a panel independent from the investigation team with his representations on the allegations. He has chosen not to avail himself of the opportunity to make substantive representations, despite a meeting having been convened at his request for the purpose of hearing his oral representations.

- b. It is satisfied that the relevant activities of Mr Carron were substantially connected with the regulated activities of SJP and, accordingly, he was acting within the scope of his controlled functions and the Authority's disciplinary powers are applicable.
- c. In the absence of any substantive response by Mr Carron to the allegations against him as set out in the Warning Notice, it considers that the matters set out in this Notice are correctly stated.